

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

ANDREW CHERNER ENGLER, M.D.

Case No. 800-2016-022304

**Physician's and Surgeon's
Certificate No. G52230**

Respondent

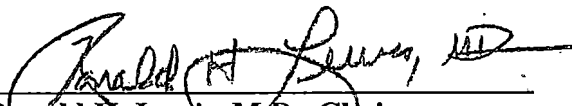
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 14, 2019.

IT IS SO ORDERED: May 15, 2019.

MEDICAL BOARD OF CALIFORNIA



**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 KEITH C. SHAW
Deputy Attorney General
4 State Bar No. 227029
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9515
7 Facsimile: (619) 645-2012

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 800-2016-022304

15 **ANDREW CHERNER ENGLER, M.D.**

OAH No. 2018090623

16 290 Baldwin Avenue
17 San Mateo, CA 94401

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 **Physician's and Surgeon's Certificate No.**
19 **G 52230**

Respondent.

20
21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
26 of California (Board). She brought this action solely in her official capacity and is represented in
27 this matter by Xavier Becerra, Attorney General of the State of California, by Keith C. Shaw,
28 Deputy Attorney General.

2. Respondent Andrew Cherner Engler, M.D. (Respondent) is represented in this proceeding by attorney Stephen M. Boreman, Esq., whose address is: One Embarcadero Center, Suite 400, San Francisco, CA 94111.

3. On or about April 23, 1984, the Board issued Physician's and Surgeon's Certificate No. G 52230 to Andrew Cherner Engler, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-022304, and will expire on February 29, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-022304 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 2, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-022304 is attached as Exhibit A and incorporated herein by reference.

ADVICE AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-022304. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2016-022304, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent gives up his right to contest that, at a hearing, Complainant
7 could establish a prima facie case with respect to the charges and allegations contained in the
8 Accusation.

9 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below.

12 RESERVATION

13 12. The statements made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the Medical Board of California or other
15 professional licensing agency is involved, and shall not be admissible in any other criminal or
16 civil proceeding.

17 CONTINGENCY

18 13. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.

28 ///

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing statements and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 52230 issued to Respondent Andrew Cherner Engler, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months from the effective date of the Decision and Order on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge, including proper billing and coding procedures, and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after

Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MONITORING - BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a billing monitor(s), the name and qualifications of one or more persons with expertise in billing and coding, and/or licensed physicians and surgeons, whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

1 Within 60 calendar days of the effective date of this Decision, and continuing throughout
2 probation, Respondent's billing shall be monitored by the approved monitor. Respondent shall
3 make all records available for immediate inspection and copying on the premises by the monitor
4 at all times during business hours and shall retain the records for the entire term of probation.

5 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
6 date of this Decision, Respondent shall receive a notification from the Board or its designee to
7 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
8 shall cease the practice of medicine until a monitor is approved to provide monitoring
9 responsibility.

10 The monitor(s) shall submit a quarterly written report to the Board or its designee which
11 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
12 are within the standards of practice of billing and whether Respondent is billing appropriately. It
13 shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly
14 written reports to the Board or its designee within 10 calendar days after the end of the preceding
15 quarter.

16 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
17 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
18 name and qualifications of a replacement monitor who will be assuming that responsibility within
19 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
20 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
21 notification from the Board or its designee to cease the practice of medicine within three (3)
22 calendar days after being so notified. Respondent shall cease the practice of medicine until a
23 replacement monitor is approved and assumes monitoring responsibility.

24 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
25 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
26 Chief Executive Officer at every hospital where privileges or membership are extended to
27 Respondent, at any other facility where Respondent engages in the practice of medicine,
28 including all physician and locum tenens registries or other similar agencies, and to the Chief

1 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
2 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
3 calendar days.

4 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5 5. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
6 governing the practice of medicine in California and remain in full compliance with any court
7 ordered criminal probation, payments, and other orders.

8 6. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
9 under penalty of perjury on forms provided by the Board, stating whether there has been
10 compliance with all the conditions of probation.

11 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
12 of the preceding quarter.

13 7. GENERAL PROBATION REQUIREMENTS.

14 Compliance with Probation Unit

15 Respondent shall comply with the Board's probation unit.

16 Address Changes

17 Respondent shall, at all times, keep the Board informed of Respondent's business and
18 residence addresses, email address (if available), and telephone number. Changes of such
19 addresses shall be immediately communicated in writing to the Board or its designee. Under no
20 circumstances shall a post office box serve as an address of record, except as allowed by Business
21 and Professions Code section 2021(b).

22 Place of Practice

23 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
24 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
25 facility.

26 License Renewal

27 Respondent shall maintain a current and renewed California physician's and surgeon's
28 license.

1 Travel or Residence Outside California

2 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
3 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
4 (30) calendar days.

5 In the event Respondent should leave the State of California to reside or to practice,
6 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
7 departure and return.

8 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
9 available in person upon request for interviews either at Respondent's place of business or at the
10 probation unit office, with or without prior notice throughout the term of probation.

11 9. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
12 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
13 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
14 defined as any period of time Respondent is not practicing medicine as defined in Business and
15 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
16 patient care, clinical activity or teaching, or other activity as approved by the Board. If
17 Respondent resides in California and is considered to be in non-practice, Respondent shall
18 comply with all terms and conditions of probation. All time spent in an intensive training
19 program which has been approved by the Board or its designee shall not be considered non-
20 practice and does not relieve Respondent from complying with all the terms and conditions of
21 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
22 on probation with the medical licensing authority of that state or jurisdiction shall not be
23 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
24 period of non-practice.

25 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
26 months, Respondent shall successfully complete the Federation of State Medical Board's Special
27 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
28 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

1 Disciplinary Orders and Disciplinary Guidelines” prior to resuming the practice of medicine.

2 Respondent’s period of non-practice while on probation shall not exceed two (2) years.

3 Periods of non-practice will not apply to the reduction of the probationary term.

4 Periods of non-practice for a Respondent residing outside of California will relieve
5 Respondent of the responsibility to comply with the probationary terms and conditions with the
6 exception of this condition and the following terms and conditions of probation: Obey All Laws;
7 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
8 Controlled Substances; and Biological Fluid Testing.

9 10. COMPLETION OF PROBATION. Respondent shall comply with all financial
10 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
11 completion of probation. Upon successful completion of probation, Respondent’s certificate shall
12 be fully restored.

13 11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
14 of probation is a violation of probation. If Respondent violates probation in any respect, the
15 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
16 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
17 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
18 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
19 the matter is final.

20 12. LICENSE SURRENDER. Following the effective date of this Decision, if
21 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
22 the terms and conditions of probation, Respondent may request to surrender his or her license.
23 The Board reserves the right to evaluate Respondent’s request and to exercise its discretion in
24 determining whether or not to grant the request, or to take any other action deemed appropriate
25 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
26 shall within 15 calendar days deliver Respondent’s wallet and wall certificate to the Board or its
27 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
28 to the terms and conditions of probation. If Respondent re-applies for a medical license, the

1 application shall be treated as a petition for reinstatement of a revoked certificate.

2 13. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
3 with probation monitoring each and every year of probation, as designated by the Board, which
4 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
5 California and delivered to the Board or its designee no later than January 31 of each calendar
6 year.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
9 discussed it with my attorney, Stephen M. Boreman, Esq. I understand the stipulation and the
10 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
12 bound by the Decision and Order of the Medical Board of California.

13
14 DATED: 2/1/19



ANDREW CHERNER ENGLER, M.D.
Respondent

16 I have read and fully discussed with Respondent Andrew Cherner Engler, M.D., the terms
17 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
18 Order. I approve its form and content.

19
20 DATED: Feb. 1, 2019



STEPHEN M. BOREMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: February 1, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General



KEITH C. SHAW
Deputy Attorney General
Attorneys for Complainant

SF2018200348
71725877.docx

Exhibit A

Accusation No. 800-2016-022304

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 KEITH C. SHAW
Deputy Attorney General
4 State Bar No. 227029
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3519
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Aug 2 20 18
BY Therese ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-022304

ANDREW CHERNER ENGLER, M.D.,

A C C U S A T I O N

290 Baldwin Avenue
San Mateo, CA 94401

**Physician's and Surgeon's Certificate
No. G 52230,**

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about April 23, 1984, the Medical Board issued Physician's and Surgeon's Certificate Number G 52230 to Andrew Cherner Engler, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2020, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a
2 period not to exceed one year, or place on probation, the license of any licensee who has been
3 found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

4 B. Section 2234 of the Code, states:

5 "The board shall take action against any licensee who is charged with unprofessional
6 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
7 limited to, the following:

8 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
9 violation of, or conspiring to violate any provision of this chapter.

10 "(d) Incompetence.

11 "(e) The commission of any act involving dishonesty or corruption which is substantially
12 related to the qualifications, functions, or duties of a physician and surgeon."

13 C. Section 2261 of the Code, states:

14 "Knowingly making or signing any certificate or other document directly or indirectly
15 related to the practice of medicine or podiatry which falsely represents the existence or
16 nonexistence of a state of facts, constitutes unprofessional conduct."

17 CAUSE FOR DISCIPLINE

18 **(Unprofessional Conduct: Dishonest and Corrupt Acts/Lack of Knowledge/Creation of** 19 **False Documents)**

20 4. Respondent is subject to disciplinary action under Code sections, 2234, 2234,
21 subdivisions (a), (d), and (e), and 2261 based on the following circumstances.

22 5. Respondent is primarily engaged in the treatment of patients who suffer from
23 allergies and asthma. He operates his own allergy clinic where he is responsible for the
24 immunotherapy¹ protocols used at the practice for both injection immunotherapy and sublingual
25 immunotherapy (SLIT).² Respondent manages all financial and billing aspects of the practice.

26
27 ¹ Immunotherapy is a preventive treatment for allergic reactions to various substances.

28 ² Sublingual immunotherapy is an alternative way to treat allergies without injections that
comes in tablet form and is intended to boost tolerance to the allergen and reduce symptoms.

6. Beginning in or around May 2014 through January 2015, Respondent incorrectly used billing codes intended for the preparation of antigens³ for injection therapy, but actually used billing codes for the preparation of antigens for SLIT therapy following patient immunotherapy treatments.

7. Starting in or around October 2014 through October 2015, Respondent submitted numerous billings to insurance companies for payment of injection therapy performed at the office, but were actually self-administered by the patient outside of the office, specifically at the patient's home, where there was no medical monitoring of the patient by a member of Respondent's practice.

8. Respondent's conduct is substantially related to the qualifications, functions and duties of a physician and surgeon in that his medical billing is directly associated with his medical practice and demonstrates unprofessional conduct, dishonest and corrupt acts, lack of knowledge/incompetency, and knowingly creating false health care documents. As such, his conduct constitutes cause for discipline pursuant to Code sections 2234, 2234(a), 2234(d) (lack of knowledge), 2234(e) (dishonest/corrupt acts), and 2261 (false documents).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 52230,
issued to Andrew Cherner Engler, M.D.;

2. Revoking, suspending or denying approval of Andrew Cherner Engler, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Andrew Cherner Engler, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and


///

///

³ An antigen is any substance that causes the body to make an immune response against that substance.

1 4. Taking such other and further action as deemed necessary and proper.
2

3 DATED: August 2, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

7 SF2018200348
8 21130184.doc
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28